

MEDICAL RECORDS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill amends provisions relating to access to medical records.

Highlighted Provisions:

This bill:

- ▶ clarifies certain provisions relating to access to medical records;
- ▶ enacts new requirements relating to requests for medical records in an electronic format; and
- ▶ requires a health care provider to waive certain fees for a request for medical records for an indigent individual and an individual making a qualified claim.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-618, as last amended by Laws of Utah 2015, Chapter 217

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-5-618** is amended to read:

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) Pursuant to Standards for Privacy of Individually Identifiable Health Information,

30 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or
31 receive a copy of the patient's records from a health care provider as defined in Section
32 78B-3-403, when that health care provider is governed by the provisions of 45 C.F.R., Parts
33 160 and 164.

34 (2) When a health care provider as defined in Section 78B-3-403 is not governed by
35 Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and
36 164, a patient or a patient's personal representative may inspect or receive a copy of the
37 patient's records unless access to the records is restricted by law or judicial order.

38 (3) A health care provider who provides a paper or electronic copy of a patient's
39 records to the patient or the patient's personal representative:

40 (a) shall provide the copy within the deadlines required by the Health Insurance
41 Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec.
42 164.524(b); and

43 (b) may charge a reasonable cost-based fee provided that the fee includes only the cost
44 of:

45 (i) copying, including the cost of supplies for and labor of copying; and

46 (ii) postage, when the patient or [~~patient~~] patient's personal representative has
47 requested the copy be mailed.

48 (4) Except for records provided by a health care provider under Section 26-1-37, a
49 health care provider who provides a copy of a patient's records to a patient's attorney, legal
50 representative, or other third party authorized to receive records:

51 (a) shall provide the copy within 30 days after receipt of notice; and

52 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
53 following rates:

54 (i) [~~\$21.16~~] \$30 per request for locating a patient's records[~~, per request~~];

55 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
56 cents per page for each additional page;

57 (iii) the cost of postage when the [~~third party~~] requester has requested the copy be

58 mailed; ~~and~~

59 (iv) if requested, the health care provider will certify the record as a duplicate of the
60 original for a fee of \$20; and

61 ~~(iv)~~ (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

62 (5) Except for records provided under Section 26-1-37, a contracted third party service
63 which provides medical records, other than a health care provider under Subsections (3) and
64 (4), who provides a copy of a patient's records to a patient's attorney, legal representative, or
65 other third party authorized to receive records:

66 (a) shall provide the copy within 30 days after the request; and

67 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
68 following rates:

69 (i) ~~[\$21.16]~~ \$30 per request for locating a patient's records;

70 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
71 cents per page for each additional page;

72 (iii) the cost of postage when the ~~third party~~ requester has requested the copy be
73 mailed; ~~and~~

74 (iv) if requested, the health care provider or the health care provider's contracted third
75 party service will certify the record as a duplicate of the original for a fee of \$20; and

76 ~~(iv)~~ (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

77 (6) A health care provider or ~~its~~ the health care provider's contracted third party
78 service shall deliver the medical records in the ~~digital or~~ an electronic medium customarily used
79 by the health care provider or ~~its~~ the health care provider's contracted third party service or in
80 a universally readable image such as portable document format:

81 (a) if the patient, patient's personal representative, or a third party authorized to receive
82 the records requests the records be delivered in ~~a digital or~~ an electronic medium; and

83 (b) the original medical record is readily producible in ~~a digital or~~ an electronic
84 medium.

85 (7) (a) ~~The~~ Except as provided in Subsections (7)(b) and (c), the per page fee in

86 Subsections (3), (4), and (5) applies to medical records reproduced electronically or on paper.

87 ~~[(b) For record requests made on or before June 30, 2018, the per page fee for~~
88 ~~producing a copy of records on a digital or electronic medium shall be 60% of the per page fee~~
89 ~~otherwise provided in this section, regardless of whether the original medical records are stored~~
90 ~~in electronic format.]~~

91 ~~[(c)]~~ (b) For record requests made on or after July 1, 2018, the per page fee for
92 producing a copy of records ~~[on a digital or]~~ in an electronic medium shall be 50% of the per
93 page fee otherwise provided in this section, regardless of whether the original medical records
94 are stored in electronic format.

95 (c) (i) For electronic record requests made on or after July 1, 2021, a health care
96 provider or a health care provider's contracted third party service shall deliver the medical
97 records in the electronic medium customarily used by the health care provider or the health care
98 provider's contracted third party service or in a universally readable image, such as portable
99 document format, if the patient, patient's personal representative, patient's attorney, legal
100 representative, or a third party authorized to receive the records, requests the records be
101 delivered in an electronic medium.

102 (ii) An entity providing requested information under Subsection (7)(c)(i):

103 (A) shall provide the requested information within 30 days; and

104 (B) may not charge a fee for the electronic copy that exceeds \$150 regardless of the
105 number of pages and regardless of whether the original medical records are stored in electronic
106 format.

107 (8) (a) ~~[Beginning January 1, 2016, the fee for providing patient's records shall be~~
108 ~~adjusted annually as specified in this section based on the most recent changes to the]~~ As used
109 in this section, "inflation" means the unadjusted Consumer Price Index, as published by the
110 Bureau of Labor Statistics of the United States Department of Labor, that measures the average
111 changes in prices of goods and services purchased by urban wage earners~~[, clerical workers'~~
112 ~~families, and single workers living alone]~~ and clerical workers.

113 (b) Beginning January 1, 2022, and on January 1 of each year thereafter, the state

114 treasurer shall adjust the following fees for inflation:
115 (i) the fee for providing patient's records under:
116 (A) Subsections (4)(b)(i) through (ii); and
117 (B) Subsections (5)(b)(i) through (ii); and
118 (ii) the maximum amount that may be charged for an electronic copy under Subsection
119 (7)(c)(ii)(B).
120 (c) On or before January 30, 2022, and on or before January 30 of each year thereafter,
121 the state treasurer shall:
122 (i) certify the inflation-adjusted fees and maximum amounts calculated under this
123 section; and
124 (ii) notify the Administrative Office of the Courts of the information described in
125 Subsection (8)(c)(i) for posting on the court's website.
126 (9) (a) As used in this Subsection (9), "qualified claim or appeal" means a claim or
127 appeal under any:
128 (i) provision of the Social Security Act as defined in Section [67-11-2](#); or
129 (ii) federal or state financial needs-based benefit program.
130 (b) Notwithstanding Subsections (3) through (5), if a request for a medical record is
131 accompanied by documentation of a qualified claim or appeal, a health care provider or the
132 health care provider's contracted third party service:
133 (i) may not charge a fee for the first copy of the record for each date of service that is
134 necessary to support the qualified claim or appeal in each calendar year;
135 (ii) for a second or subsequent copy in a calendar year of a date of service that is
136 necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:
137 (A) exceed 60 cents per page for paper photocopies;
138 (B) exceed a reasonable cost for copies of X-ray photographs and other health care
139 records produced by similar processes;
140 (C) include an administrative fee or additional service fee related to the production of
141 the medical record; or

142 (D) exceed the fee provisions for an electronic copy under Subsection (7)(c); and
143 (iii) shall provide the health record within 30 days after the day on which the request is
144 received by the health care provider.

145 (10) (a) As used in this Subsection (10), "indigent individual" means an individual
146 whose household income is at or below 100% of the federal poverty level as defined in Section
147 [26-18-3.9](#).

148 (b) Except as otherwise provided in Subsections (3) through (5), a health care provider
149 or the health care provider's contracted third party service shall waive all fees under this section
150 for an indigent individual.

151 (c) A health care provider or the health care provider's contracted third party service
152 may require the indigent individual or the indigent individual's authorized representative to
153 provide proof that the individual is an indigent individual by executing an affidavit.

154 (d) (i) An indigent individual that receives copies of a medical record at no charge
155 under this Subsection (10) is limited to one copy for each date of service for each health care
156 provider, or the health care provider's contracted third party service, in each calendar year.

157 (ii) Any request for additional copies in addition to the one copy allowed under
158 Subsection (10)(d)(i) is subject to the fee provisions described in Subsection (9).